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Recall of State Elected Officials

A Proposed Minnesota Constitutional Amendment

**“Shall the Minnesota Constitution be amended to
provide for recall of elected state officers for wrongdoing?”**

This information brief is about the recall amendment, one of two amendments to the state constitution proposed by the 1996 Minnesota Legislature. Each of these proposed amendments is subject to ratification by the voters and consequently will be a question on the ballot in the November general election. If ratified by the voters in November, the recall amendment would allow voters to remove or “recall” from office certain elected state officials for wrongdoing.

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The Minnesota Recall Proposal

The 1996 Legislature proposed an amendment to the state constitution that would allow voters to remove or “recall” from office certain elected state officials for wrongdoing.¹ If ratified by the voters, recall would join impeachment (for constitutional officers and judges), removal (for judges), and expulsion or exclusion from office (for legislators) as another tool to remove a state officer before the end of the term to which he or she was elected.² The following four pages summarize the proposed recall constitutional amendment: Which state officials could be removed from office? For what reasons? And by what means?

Which officials would be subject to recall for wrongdoing?

The following elected state officials could be recalled from office under the amendment:

- ▶ a state senator or state representative
- ▶ an elected state executive official — the governor, lieutenant governor, secretary of state, attorney general, state treasurer, and state auditor
- ▶ a state court judge — a judge of the supreme court, the court of appeals, or a district (trial) court

What sort of wrongdoing would be grounds for recall?

For judges, the grounds for recall would be established by the state supreme court.

For the other state officers subject to recall (legislators and elected state executive officials like the governor), the proposed constitutional amendment would allow recall on two grounds:

- (1) “serious malfeasance or nonfeasance during the term of office in the performance of the duties of the office”
- (2) “conviction during the term of office of a serious crime”

If the constitutional amendment is ratified by the voters in November, these words, stating the sort of misconduct that would justify recalling a legislator or an executive official, will become part of the state constitution. Once they are in the constitution, the words could not be changed by future legislatures, except by another constitutional amendment that would have to be ratified by the voters.

“Malfeasance,” “nonfeasance,” “serious crime” — what is the meaning of these terms used in the proposed constitutional amendment? The 1996 law that proposed the recall amendment also

contains a statute (that is, a state law) that implements the constitutional amendment. This law would go into effect if the amendment is ratified by the voters in November. Among other things, the recall law contains definitions of words used in the constitutional amendment. Because these definitions are in a statute, rather than in the constitution, future legislatures could change them simply by amending the law. Even though they are subject to change by future legislatures, the definitions in the 1996 law give a good indication of what the 1996 Legislature, which proposed the constitutional amendment, intended the constitutional terms to mean.

Malfeasance, according to the 1996 law, means “the intentional commission of an unlawful or wrongful act...in the performance of the officer’s duties that is substantially outside the scope of the authority of the officer and that substantially infringes on the rights of any person or entity.”³

Nonfeasance, according to the 1996 law, means “the intentional, repeated failure...to perform specific acts that are required duties of the officer.”⁴

Serious crime, according to the 1996 law, means:⁵

- ▶ a crime that is punished as a *misdemeanor* [meaning that the punishment is a sentence of not more than 90 days, or a fine of not more than \$700, or both] and that involves “assault, intentional injury or threat of injury to person or public safety, dishonesty, coercion, obstruction of justice, or the sale or possession of controlled substances.”
- ▶ a crime that is punished as a *gross misdemeanor* [meaning that the punishment is a sentence of more than 90 days up to one year, or a fine of more than \$700 up to \$3000, or both] and that involves any of the behaviors listed in the paragraph just above, plus “stalking” or “aggravated driving while intoxicated.”

An official convicted of a **felony** would not be subject to recall, even though a felony is a more serious crime than either a misdemeanor or a gross misdemeanor. The reason for this is that under the state constitution a convicted felon is not eligible to vote or to hold elective office while under sentence.⁶ So, if a state official is convicted and sentenced for a felony, that official would be removed from office without any need for recall by the voters.

How would voters go about recalling an official?

In its barest outline, the recall process is a two-step affair:

- (1) A recall **petition** is circulated for signatures. The petition describes misconduct by an official that might justify removal from office.
- (2) If enough eligible voters sign the petition, then a recall **election** is held to let all voters decide whether the official should be removed from office.

The following two pages describe in greater detail the recall process proposed for Minnesota by the 1996 Legislature.

The Constitutional Amendment

This page shows the procedures prescribed in the proposed constitutional amendment. Future legislatures could not change these procedures, except by means of another constitutional amendment that would have to be ratified by the voters.

<p>Petitioners prepare a recall petition.</p> <p style="text-align: center;">↓</p>	<p>The petition must specify the conduct that the petitioners believe may warrant removing an official from office.</p>
<p>The state supreme court certifies the content of the petition.</p> <p style="text-align: center;">↓</p>	<p>A petition may not be issued until the state supreme court decides that the facts alleged in the petition are true and are sufficient grounds for issuing a recall petition.</p>
<p>The petition is issued and petitioners circulate it for signatures.</p> <p style="text-align: center;">↓</p>	<p>There are two requirements for signatures: (1) Each signer must be an eligible voter residing in the district that the official serves (for example, a legislative district for a legislator, or the whole state for a governor). (2) The petition must be signed by eligible signers numbering not less than 25 percent of the number of votes cast for the office at the most recent general election.⁷</p>
<p>The secretary of state verifies signatures.</p> <p style="text-align: center;">↓</p>	<p>The secretary of state must review the signed petition to be sure that it has at least the required number of valid signatures.</p>
<p>A recall election is held.</p> <p style="text-align: center;">↓</p>	<p>If the secretary of state decides that the petition has at least the required number of valid signatures, a recall election must be scheduled — unless the election would occur less than six months before the end of the official's term of office. That is, a recall election cannot be held after about the first week in July in a year in which the named official is up for re-election in the November general election.</p>
<p>The official is replaced.</p>	<p>An official who is removed from office by a recall election, or who resigns from office after a recall petition is issued, is not eligible to be appointed to fill the resulting vacancy in the office.⁸</p>

The Implementing Law

This page summarizes the provisions of a law that was enacted during the 1996 session of the legislature.⁹ This law would implement the constitutional amendment, if the voters ratify it in November. Without a ratified amendment, this law would have no effect. Because these procedures are in statute, rather than in the constitution, future legislatures can change them simply by amending the law.

Petitioners would use a form from the secretary of state to write up a proposed petition. The form would contain information on petition requirements and procedures with spaces for allegations of misconduct and for signatures. It would be against the law for proposers of a petition to allege any material fact in support of the petition that the proposers know is false or allege with reckless disregard of whether it is false. The proposed petition, signed by at least 25 eligible voters residing in the official's district, would be submitted to the secretary of state with a filing fee of \$100. If the proposed petition is in the proper form, the secretary of state would notify the official named in the petition and forward it to the clerk of the appellate courts.

The state Supreme Court would decide whether the proposers of the petition have shown : (a) by a preponderance of the evidence that the factual allegations supporting the petition are true, and (b) that the facts found to be true are sufficient grounds for issuing a recall petition. In making this decision, the court would follow a three-step process, which could take a maximum of about 60 days: (1) A single judge would conduct an initial screening of the proposed petition, along with any material submitted by the parties. If the screening judge decides that the proposed petition does not allege facts that, if proven, would constitute legal grounds for recall under the constitution, the judge would dismiss the petition. Otherwise, the judge would assign the petition to a special master (an active or retired judge) for public hearing. (2) The special master would conduct a public, fact-finding hearing on the allegations of wrongdoing contained in the proposed petition. After the hearing, the special master would report to the full supreme court on the results of the hearing. The master's report would contain the master's recommendations to the court about whether the proposers of the petition have met the burden of proof required by the law. (3) The supreme court would review the master's report and make a final decision. If the court concludes that the proposers of the petition have not met the burden of proof required by the law, the court would dismiss the petition. Otherwise, the court would prescribe the statement of facts and grounds for recall that must appear on the recall petition and would order the secretary of state to issue the petition.

The secretary of state would issue the recall petition, which the proposers could then circulate for signatures. It would be against the law for anyone to falsify a signature or urge others to do so, to interfere with the right of others to decide freely whether to sign the petition or not, or to offer to reward others for signing or not signing the petition. The proposers of the petition would have 90 days to secure the required number of signatures and file the signed petition with the secretary of state.

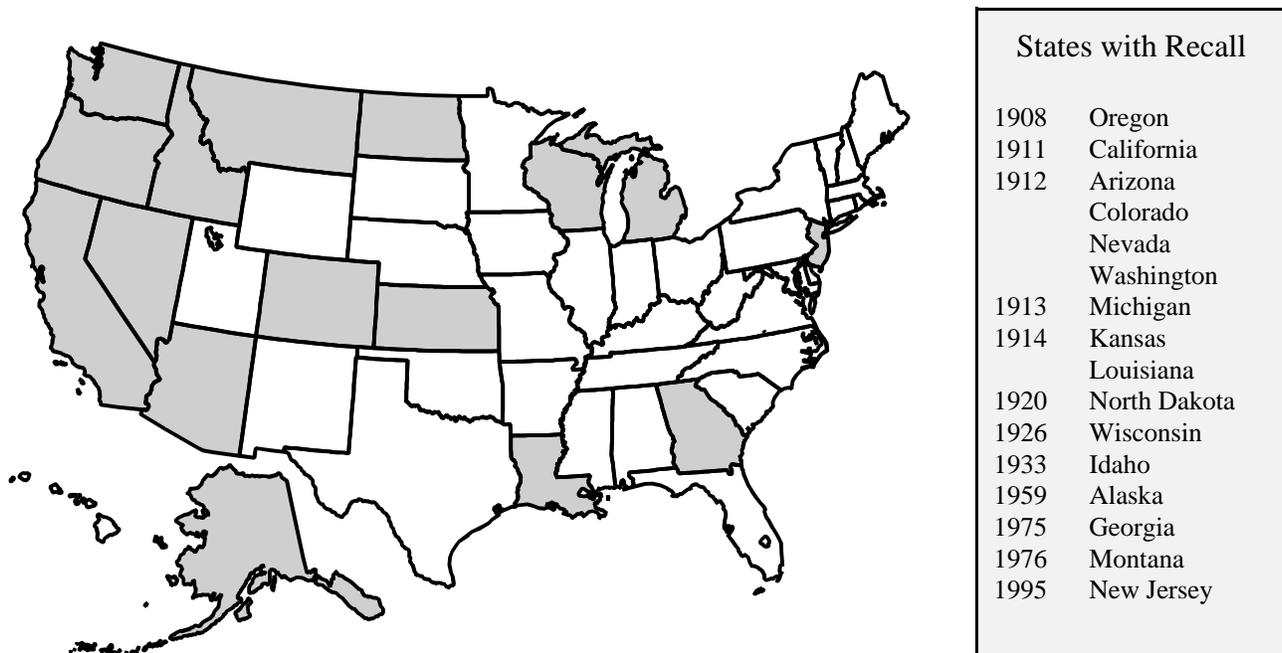
After the signed petition is filed, the secretary of state would verify the number and eligibility of signers. If the petition does not have the required number of valid signatures, the secretary of state would dismiss the petition. If the petition has the required number of valid signatures, the secretary of state would notify the parties and the governor that the petition is sufficient to call for a recall election.

Within five days after notification by the secretary of state, the governor would announce the date for the recall election (unless the six-month, end-of-term constitutional deadline cannot be met).

If a majority of the votes cast in the recall election favors removing the official, the official would be removed from office and the office would be vacant. The vacancy would be filled in the way vacancies in the office are normally filled.¹⁰

Recall Laws in Other States

This section compares six major differences and similarities between the Minnesota proposal and the laws of the sixteen states that currently allow recall of state officials. The sixteen states are shown on the map below. The features compared are: officers subject to recall, grounds for recall, review of grounds, signature requirements, timing and frequency limits on recall, and the opportunity for the recall subject to prepare a defense statement.



States differ in whether they subject judges to recall.

The Minnesota recall proposal would subject judges to recall. Six states that allow recall of state officers exclude judges from recall. Minnesota would join the ten states that currently subject judges to recall elections: Arizona, California, Colorado, Georgia, Montana, Nevada, New Jersey, North Dakota, Oregon, and Wisconsin.

A few states permit recall only for specified reasons.

The Minnesota recall proposal specifies grounds that must be met in order to recall covered officers, except judges. (Under the proposed constitutional amendment, the state supreme court would establish the grounds for recall of judges.) Minnesota would join five states in specifying grounds that must be met in order to recall a covered officer.

Minnesota: serious malfeasance or nonfeasance during the term of office, or conviction during the term of office of a crime defined as “serious” in the recall statute¹¹

Alaska: lack of fitness, incompetence, neglect of duties, corruption

- Georgia:** (1) conduct that relates to and adversely affects the office and the rights and interests of the public, and one of the following: (2) malfeasance while in office; violation of the oath of office; an act of misconduct while in office; failure to perform duties prescribed by law; or wilful misuse, conversion, or misappropriation of public property or funds associated with the office held
- Kansas:** felony conviction, misconduct in office, incompetence, failure to perform duties prescribed by law
- Montana:** physical or mental lack of fitness, incompetence, violation of the oath of office, official misconduct, conviction of specified felonies
- Washington:** malfeasance, misfeasance, or violation of the oath of office

Five other states require recall proponents to submit a statement of reasons for the information of voters, but do not require that the petition satisfy any particular grounds: **Arizona, California, Colorado, Idaho, and Nevada.** The remaining six states require neither specific grounds nor a statement of reasons for recall.

Two states provide for review of the adequacy of the grounds for recall that are alleged in a recall petition.

Of the states that specify grounds for recall, two provide for some review of the adequacy of the grounds alleged in the recall petition. The proposed Minnesota recall mechanism would include more extensive review of the sufficiency of recall grounds than do either of these states. First a Minnesota supreme court justice would be required to determine whether the proposed recall petition alleges facts that, if true, would satisfy the grounds specified in the law for issuing a recall petition. If that test is met, the matter would be assigned to an active or retired judge to conduct a fact-finding hearing and report to the full supreme court on whether the allegations in the petition are true and, if so, whether they are sufficient grounds for issuing a recall petition. The supreme court would make the final determination on whether a petition may be circulated and prescribe a statement of facts and grounds that would appear in the recall petition.

By comparison, in Georgia a candidate may request a trial court to determine whether the stated grounds, if true, would satisfy the legal requirement for recall. However, the court is not allowed to take the second step provided in the Minnesota proposal: to determine whether the allegations are true.

In Washington the court is required, without waiting for a candidate's request, to determine whether the acts in the recall charge satisfy the criteria for recall. As in Georgia, once the court makes this determination, it is not allowed to take evidence or make a finding whether the charges are true.

Montana provides a very minimal check on the accuracy of recall petitions by requiring proponents to swear to the truth of allegations, but without any review of the truth. Finally, although Kansas requires grounds for a recall, its law largely negates that requirement

by (1) omitting any review of the sufficiency of petition allegations against state officers and (2) providing that no recall is to be void because of insufficient grounds.

Timing and frequency limits on recall are common.

States place two kinds of limits on recall elections: timing and frequency. Timing limits govern how early or late in an officer's term he or she may be recalled. Frequency limits govern how many times an officer can be subject to recall.

Minnesota would join only three other states in putting no restriction on how early in the term an officer can be subject to recall. Four states allow legislators to be recalled beginning five or ten days after the beginning of the first legislative session following their election. All other states prohibit beginning a recall drive until anywhere from two months to one year after an officer's term begins.

Minnesota would join seven other states in restricting how late in the term an officer can be subject to recall. The Minnesota proposal would prohibit a recall election held later than six months before the end of the officer's term. The end-of-term limit on recall in the seven other states ranges from requiring that the recall election be held no later than six months before the regular election for the office to requiring that the petition drive start 180 days before the end of the term.

The Minnesota proposal would place no limits on the number of times during a term that an officer can be subject to recall. Two states permit only one recall election per officer per term. Five states prohibit a second recall drive against an officer who wins a recall election, unless the sponsors first pay the public treasury's costs of conducting the first recall. One state requires a two year delay before a second recall effort can proceed against an officer who survives a recall election, unless the sponsors pay the public treasury's costs for the first recall. Two states require a six month wait before a second recall drive can start against an officer who has survived a recall election.

Signature requirements vary among the states.

The proposed Minnesota recall amendment would require the signatures of eligible voters in a number equal to 25 percent of the vote at the last election for the office. This would place Minnesota in about the middle of the range of signature requirements in other states. States differ not only in the percentage they specify, but also in whether the percentage is calculated on the vote for the office in question, the total vote at the last election in the district, or the total number of registered voters.

At the low end, Kansas subjects officers to recall upon the signatures of voters equal to ten percent of the vote for the office at the last general election. At the high end, in the case of legislators, Wisconsin requires the signatures of a number equal to 35 percent of the vote for the office at the last election. Louisiana is close to Wisconsin in requiring for all offices signatures equal to one-third of the vote for the office at the last election.

Many states allow a defense statement by the officer who is subject to a recall petition.

A feature found in many states but not included in the Minnesota proposal is a defense statement by the officer named in a recall petition. Twelve states permit the subject of the recall to write a 200 word statement why he or she should not be recalled. Colorado allows the subject to write 300 words. The statement appears on the ballot in eight states and is posted at the polling place in three states. In one state the officer's defense appears only on the sample ballot.

Experience with Recall in Other States

How Often Are State-level Officials Recalled in Other States? To answer this question we gathered information from the sixteen recall states on their experience in recalling state-level officials. Not all states keep complete records on how many recall petitions are initiated, but most states know how many petitions have led to a recall election. We also used information from Lawrence Sych, "State Recall Elections: What Explains Their Outcomes," *Comparative State Politics*, October, 1996, pp. 7-25.

Based on the information available to us, we conclude that state-level officials are rarely recalled from office. While recall of *local* officials is common in some states, recall of *state-level* officials is not. As far as we could determine, during the last twenty-five years in the entire country there have been eleven recall elections involving state officials (three in California, three in Wisconsin, two in Idaho, two in Michigan, and one in Oregon). In three of the eleven recall elections, the official retained the office (a judge in Wisconsin in 1982, a legislator in Wisconsin in 1990, and a legislator in California in 1994). In the other eight elections, the official lost the office (a Senator and House member in Idaho in 1971, two senators in Michigan in 1984, a House member in Oregon in 1985, two assembly members in California in 1994 and 1995, and one senator in Wisconsin in 1996).

Recall petitions against state-level officials also appear to be infrequent in most recall states, although the records are less reliable on this point. Only Arizona and California seem to experience routine or regular petition drives against state officials. Many recall states have no recent experience or memory of recall petitions circulating against any state officials. Other states report that, while voters from time to time give notice of an intent to circulate a petition, most of these initiatives never result in a petition being filed with signatures.

The use of recall against state officials has increased since 1970, after several decades of disuse. Of the eleven recall elections that we discovered, four occurred in the 1980s and five in the 1990s — four in the past three years. On the other hand, the states where recall has occurred in recent decades do not have laws that specify certain grounds for recall, as the Minnesota proposal does. Most of the recall petitions and elections in other states have sprung from an official's position on a contentious vote or public policy issue, and not from the sort of wrongdoing that would support recall under the Minnesota proposal.

Alaska

In the last twenty years, voters have initiated two recall petitions (one against a governor, the other against a lieutenant governor). Neither secured enough signatures to cause a recall election.

Arizona

Several petitions (three or four) are initiated each year against state officials. Recently, there was a flurry of six petitions, but four of them named the same official. No petition in recent decades has secured enough signatures to cause a recall election. In 1988, a petition to recall the governor might have been successful had the governor not been impeached during the petition drive.

California

In the last twenty years, voters have filed 88 notices of intent to petition for the recall of a state official. However, a single individual, disgruntled about a decision to close some frog ponds, was the moving force behind 37 of these notices. Also, the 88 notices do not name 88 different officials. A single official is often named in repeated notices; it is not unusual for a state official in California to be named in a half dozen notices of intent to petition for recall. The 88 notices filed in the last two decades have named a total of less than 40 officials: five senators, 16 assembly members, three governors, a lieutenant governor, an attorney general, the entire supreme court as a group, and each individual member of the supreme court. However, the frog pond controversy accounts for six of the 18 notices filed on governors, most of the notices filed on supreme court justices, three notices filed on a single senator and eight on a single assembly member, and all the notices filed on the lieutenant governor and the attorney general.

Of the 88 notices of intent to petition for the recall of a state official, three petitions secured enough signatures to cause a recall election (two in 1994 and one in 1995). All three elections involved members of the assembly. Two of the elections resulted in the assembly member being recalled: one in 1994 after voting for gun control legislation; the other in 1995 after switching from Republican to Independent and voting with the Democrats to give them effective control of the assembly.

Colorado

There are occasional threats, but there have been no petition drives against state-level officials in the last twenty years, and no recall elections.

Georgia

The state does not keep records on petition drives, but no petition against a state official has secured enough signatures to cause a recall election in recent decades.

Idaho

A Senator and a House member were recalled in 1971 after voting for a pay raise for legislators.

Kansas

There have been no petitions to recall a state-level official in the last ten years.

Louisiana

In the last twenty years, voters have initiated two petitions, both against the same governor, one in the mid-1980s, the other in the early 1990s. Neither proceeding led to an election: one failed to secure enough signatures, and the other was withdrawn.

Michigan

In the last twenty years, voters have initiated seven or eight petitions against state-level officials. Four of these petition drives (against three senators and a governor) occurred at the same time, in the early 1980s, protesting an increase in the state's income tax rate. One petition (against a governor) protested cuts in state spending in the early 1990s. Another, in 1996, complained of a House member's position on gun control.

Of the seven or eight petition drives that voters have initiated in the last two decades, four resulted in the filing of a petition with signatures; the other drives expired without a filing. Of the four petitions filed, two were dismissed because they did not contain the required number of valid signatures (against a senator on the income tax issue, and against the governor for budget cuts). The other two filed petitions were accepted as valid and led to a recall election. Both elections were in 1984 and involved senators who had voted for the income tax increase. One senator was recalled; the other resigned from office before the results of the recall election were certified.

Montana

In the last twenty years, two petitions have been initiated, both against the same district court judge. Neither proceeding led to an election: the first petition was dismissed for defects; the judge challenged the basis of the second petition and prevailed in court.

New Jersey

Enactment of the recall law came only in 1995, so the state has no experience with it.

Nevada

Reliable records exist only for the last decade. In that time, voters have filed about ten notices of intent to petition for the recall of a state official. None of these notices has led

to a recall election. Nevada's recall experience may be changing as a result of a 1991 state law that altered recall procedures by reducing the role of the courts.

North Dakota

The state does not keep records on petition drives. In the last twenty years, some drives to recall state officials may have been initiated by citizens at the grass-roots level, but no petition has secured enough signatures to cause a recall election.

Oregon

Oregon does not keep records on petition drives. Election officials can remember one petition circulating in recent years against a governor, but it failed to gain enough signatures. In 1985, a House member was recalled after making false statements in a state campaign pamphlet and forging a signature.

Washington

There have been no recall elections involving state-level officials in recent decades.

Wisconsin

In the last two decades, voters have initiated five petitions to recall state officials. Two did not secure enough signatures to bring about a recall election. Of the three that caused a recall election, one election resulted in a recall (a senator in 1996, for favoring state aid for the Milwaukee Brewer stadium). In the other two elections, the official retained the office. One of these was a circuit court judge in 1982, who was accused of mishandling a sexual assault case; the other was a member of the assembly in 1990, who was criticized for his position on Indian spearfishing rights.

Endnotes

1. Laws 1996, ch. 469, art. 1.
2. Impeachment is a means of removing from office the constitutional officers and judges for “corrupt conduct in office or for crimes and misdemeanors.” A majority of all the members of the House of Representatives must vote for impeachment, after which the officer would be tried by the Senate and could be removed from office by vote of two-thirds of the senators voting. Minnesota Constitution, Article VIII, Sections 1 and 2.

The supreme court must remove judges from office for conviction of “a crime punishable as a felony... or any other crime that involves moral turpitude” and may remove judges for “action or inaction that may constitute persistent failure to perform duties, incompetence in performing duties, habitual intemperance or conduct prejudicial to the administration of justice that brings the judicial office into disrepute.” Minnesota Constitution, Article VI, Section 9; Minnesota Statutes, Section 490.16.

Legislators may be removed from office during their term by a two-thirds vote of the members of the body where they serve. The constitution does not specify the grounds for expelling a legislator. Minnesota Constitution, Article IV, Section 7. Each house of the legislature is also empowered to determine the eligibility of its members, which includes the power to exclude someone deemed invalidly elected by failing to meet qualification of the office or by an invalid election. Minnesota Constitution, Article IV, Section 6.

3. Laws 1996, Ch. 469, art. 2, § 2, subd. 2.
4. Laws 1996, Ch. 469, art. 2, § 2, subd. 3.
5. Laws 1996, Ch. 469, art. 2, § 2, subd. 4.
6. Minn. Const., art. VII, § 1 and 6.
7. The 25 percent requirement demands roughly the following numbers of signatures on petitions to recall the various state officials, based on vote totals for the most recent election for the respective offices. For legislative and judicial offices, the signature requirements are shown for the electoral districts with the highest and lowest voter turn-out, to indicate the possible range of signatures that would be required.

<u>Office</u>	<u>Petition Signers</u>
Governor	432,000
Auditor	422,000
Treasurer	406,000
Attorney General	419,000
Secretary of State	432,000
Supreme Court	449,000 - 498,000
Court of Appeals	306,000 - 346,000
District Judge	14,000 - 43,000
Senate	5,000 - 11,000
House	1,000 - 5,000

8. See note 10, bottom of page 5.
9. Laws 1996, Ch. 469, art. 2.

10. Current law provides the following methods for filling vacancies in these offices: If a governor is recalled, the lieutenant governor would become the governor for the remainder of the term, and the last elected president of the Senate would become the lieutenant governor. If a lieutenant governor is recalled, the last elected president of the Senate would become the lieutenant governor for the remainder of the term. If both the offices of governor and lieutenant governor are vacant simultaneously, the last elected president of the Senate would become the governor for the remainder of the term. If there is no president of the Senate at the time, other officers would succeed to the governorship in the following order: speaker of the House of Representatives, secretary of state, auditor, treasurer, attorney general. (Minnesota Constitution, Article V, Section 5; Minnesota Statutes, Section 4.06) If the secretary of state, state auditor, state treasurer, or attorney general is recalled, the governor would appoint someone to serve for the remainder of the term. (Minnesota Constitution, Article V, Section 3) If a judge is recalled, the governor would appoint someone to serve for the remainder of the term. (Minnesota Constitution, Article V, Section 3; Article VI, Section 8) If a state senator or state representative is recalled, the successor for the remainder of the term is chosen in a special election called by the governor. (Minnesota Constitution, Article IV, Section 4)
11. See page 3 for definitions of these terms and for the treatment of public officials who are convicted of a felony.